

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

In re: Presentence Reports

Misc. No. 00-308

ADMINISTRATIVE ORDER 2004-2

The PROTECT Act of 2003, Pub. L. 108-21, requires the Chief Judge of each district court to ensure that certain sentencing information is promptly forwarded to the Sentencing Commission after the entry of judgment in specified criminal cases. On June 18, 2003, the undersigned ordered the Probation Office to temporarily withhold presentence reports from the Sentencing Commission until the Commission and the Court had the opportunity to study and implement the PROTECT Act.

On August 15, 2003, after discussions with the Sentencing Commission, the undersigned issued two orders: (i) Administrative Order 2003-6; and (ii) Administrative Order 2003-5.

Administrative Order 2003-6 addresses the temporarily withheld presentence reports. The Order (i) requires the Probation Office to forward all of these presentence reports to the Sentencing Commission under seal; (ii) provides that the presentence reports would remain under seal absent a Court order; and (iii) authorizes any interested person seeking to inspect one of these presentence reports to apply for a Court order.

Administrative Order 2003-5 relates in part to Administrative Order 2000-2 and Local Rule 213.1(a) (D. Md. 2001), both of which predate the PROTECT Act. Order 2000-2

19
ccg

directs the Clerk of Court to place presentence reports under seal. The Local Rule directs that presentence reports and other documents are confidential court records to which the public has no right of access. The Local Rule also prohibits the Probation Office from disclosing the presentence report and other documents except as authorized by law or ordered by the Court.

Order 2003-5 implements the PROTECT Act by ordering the Probation Office to forward presentence reports and other sentencing documents to the Sentencing Commission promptly after the entry of judgment. The Order recognizes that by doing so, the Probation Office is not in violation of Order 2000-2 or Local Rule 213.1(a). The Order also enables the sentencing judge to specify any documents that the Sentencing Commission may review but may not disseminate without leave of Court.

At sentencings, defense counsel have, from time-to-time, requested the judge to order the Commission to keep for its "eyes only" personal information contained in presentence reports. Typically, the request focuses on Part D, which often includes sensitive background facts concerning the defendant and his family, including his parents, his siblings, and his wife and children. This information may include medical histories, work histories, as well as names and addresses.

In the great majority of cases the personal history in Part D does not factor into the judge's calculation of the guideline range. Rarely is such information germane to a determination of

the defendant's offense level or criminal history category. Part D information becomes relevant only when (i) the judge is deciding what sentence to impose within the guideline range, and (ii) the judge is deciding what special conditions of post-incarceration supervision (e.g., drug testing) to impose. In making those two decisions personal information concerning the defendant's background and character is expressly relevant. Only in a small percentage of cases does the government or the defense argue that the personal circumstances of the defendant or the defendant's family bear upon the judge's calculation of the guideline range or warrant a departure from that range.

The release of personal information is potentially embarrassing or even dangerous (e.g., addresses of family members) to the defendant and his family. Recognizing this, the government typically does not oppose a defense motion to restrict access to personal information.

Deciding confidentiality motions on a case-by-case basis at sentencing imposes an administrative burden on our increasingly understaffed Clerk's Office and Probation Office. The motions and the resulting rulings must be written, docketed, and complied with individually. This burden will be reduced if all presentence reports are treated uniformly by automatically restricting dissemination of Part D. This restriction will not frustrate the goal of gathering information stated in the PROTECT Act. Congress's expressed concern involves the determination (by

departure or otherwise) of guideline ranges, and not the determination where within the range defendants are placed or the conditions of post-incarceration supervision. Moreover, the restrictions on access to personal information can be lifted on motion for good cause shown.

Furthermore, when juvenile court and police records from the State of Maryland are included in the presentence report as part of the criminal history information, those portions of the report likewise should not be further disseminated without specific court authorization because of the provisions of Md. Code Ann., Cts. and Jud. Proc. Art. § 3-8A-27.

Accordingly, it is hereby ORDERED that:

- (i) unless otherwise ordered in a particular case, the Sentencing Commission is prohibited from releasing the personal information contained in Part D of a presentence report and any reference to Maryland juvenile or police records to any other person or agency;
- (ii) any interested person may move, for good cause shown, to lift or modify this restriction in a particular case; and
- (iii) the Probation Office shall attach a notice to each presentence report it transmits to the Sentencing Commission referring to this standing order and shall provide a copy of this order upon request.

It is so ORDERED this 8TH day of APRIL, 2004.



Benson Everett Legg
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

In re: Presentence Reports

:
:
:
:
:

NOTICE

Pursuant to Administrative Standing Order 2004-2,

I. Subject to modification by court order as provided in item II below, the Sentencing Commission is prohibited from releasing the personal information contained in Part D of this presentence report and any reference to Maryland juvenile or police records to any other person or agency.

II. An interested person may move in the United States District Court for the District of Maryland, for good cause shown, to lift or modify this restriction in this case.

III. A complete copy of the Administrative Standing Order is available upon request from the Probation Office or may be viewed on the website of the United States District Court at www.mdd.uscourts.gov.



BENSON EVERETT LEGG
Chief United States District Judge